

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Livermore, California)

THE PERRIER GROUP, d/b/a BLACK
MOUNTAIN SPRING WATER

Employer

and

Case 32-UC-384

TEAMSTERS LOCAL 278,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, careful investigation and consideration took place.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Acting Regional Director.

Upon the entire record in this proceeding, and for the reasons set forth below, I conclude that the Petition should be dismissed.

(1) The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.

(2) The Petitioner is the recognized collective bargaining representative of a unit of all full-time, part-time and seasonal route forepersons, production forepersons, sales drivers, utility drivers, bottlers I and II, utility workers I and II, interbranch drivers, equipment repair

technicians, purification system technicians, plant workers and installers employed at the Employer's Livermore, San Jose, South San Francisco, and Martinez facilities; excluding all guards, office clericals and statutory supervisors as defined in the Act. The unit consists of approximately 155 employees, 85 of which are employed at the Livermore facility. The Petitioner seeks to clarify the unit by adding to it approximately 65 employees employed at the Employer's Perrier facility located in Milpitas, California.

Prior to January 2001, the unit employees were employed by Black Mountain Spring Water, herein called Black Mountain, which was engaged in the production and distribution of Black Mountain brand bottled water products. The Petitioner and Black Mountain have been parties to successive collective bargaining agreements covering the unit, the most recent of which was effective for the period of May 1, 2000 to May 1, 2003, herein called the Agreement.¹ In January 2001, the Employer purchased Black Mountain. Upon purchasing Black Mountain, the Employer maintained operations in Black Mountain facilities without interruption, continued to do business as Black Mountain at those facilities, retained all the unit employees, and adopted the Agreement that had been in effect between the Petitioner and Black Mountain.² Before and after its purchase of Black Mountain, the Employer has also been engaged in the production and distribution of Perrier brand bottled water products, operating facilities located in Milpitas, Richmond, Calistoga, and South San Francisco, California.³ None of the employees employed in these Perrier facilities are represented by a union, and there is no history of collective bargaining at Milpitas. Since the purchase of Black Mountain, the Employer has continued to produce and

¹ The Petitioner has been the collective bargaining representative of the unit employees since about 1960.

² The Agreement contains no language addressing the multi-location nature of the Employer's business, or any arrangement in the event of a transfer of work, or the takeover or purchase of new facilities.

³ The Petitioner seeks only to add the Milpitas facility to the existing unit.

distribute Perrier products at facilities in existence prior to its purchase of Black Mountain, and has maintained its pre-existing Perrier operations as distinct from the Black Mountain operations.

On July 5, 2001, Petitioner learned that the Employer transferred some of its production operations between its Black Mountain Livermore facility and its Perrier Milpitas facility, resulting in the layoff of 3 unit employees at the Livermore facility. However, since the January 2001 purchase, no unit employees have transferred to, or performed any work at, any of the Employer's Perrier facilities, including the Milpitas facility. Likewise, none of the non-unit Perrier employees have transferred to any of the Employer's Black Mountain facilities since the purchase. Nevertheless, and based on the transfer of some production work between the Livermore and Milpitas facilities, Petitioner argues that Milpitas employees should be included in the unit.

When an employer transfers a portion of its production at one location to a new location, the Board applies its "long-held rebuttable presumption that the unit at the new facility is a separate appropriate unit." Gitano Distribution Center, 308 NLRB 1172, 1175 (1992).

This presumption may be rebutted by a showing that the additional employees have little or no separate group identity and thus cannot be considered to be a separate unit, and that the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted. *Citation omitted*. In determining whether the presumption has been rebutted, the Board examines such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; common supervision; distance between locations; and bargaining history. *Citations omitted*. The Board has identified the degree of interchange and separate supervision as particularly important factors in determining whether an accretion is warranted. *Citations omitted*.

Passavant Retirement and Health Center, 313 NLRB 1216, 1218 (1994). In Passavant, the Board dismissed the unit clarification petition seeking to add 8 employees employed at the employer's newest facility, which was located just 300 yards from the existing facility covered

by a collective bargaining agreement. Id at 1216, 1218. Although two unit employees, and 10 patients, transferred to the new facility from the existing facility, the Board found the new facility to be separate and distinct from the existing facility, relying heavily on the lack of interchange and common supervision. Id at 1217-1218.

In the instant case, all factors weigh against inclusion of the Milpitas facility employees with the existing unit of Black Mountain employees. Here, the Perrier Milpitas facility is located some 30 miles from the Black Mountain Livermore facility, and the day-to-day operations at the two facilities are totally separate. There is no interchange or day-to-day contact between any unit and non-unit employees. None of the Livermore employees have performed any work in the Milpitas plant; nor have the employees in the Milpitas plant performed any work in the Livermore plant. Also, there has been no transfer of personnel between any Black Mountain and Perrier facilities, including between the Livermore and Milpitas facilities. Further, Black Mountain and Perrier labor relations are decentralized – labor relations managers are housed separately at offices in San Carlos and South San Francisco, respectively, and each manager exercises autonomous labor relations authority. In addition, each plant has distinct corporate management and supervisory staff, with each plant responsible for its own hiring, firing, evaluations, and discipline. Thus, Livermore unit employees and Milpitas non-unit employees are separately managed and supervised. Moreover, Livermore unit employees continue to operate under the terms and conditions of employment set forth in the Agreement, whereas the wages, benefits and other terms and conditions of employment of non-unit Milpitas employees (and other non-unit Perrier employees) are determined by the preexisting and different Perrier labor relations policies. Under these circumstances, the Board's presumption that new or

separate facilities constitute separate units has not been rebutted and, therefore, I am dismissing the petition.

ORDER

The petition filed in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board by March 26, 2002.

Dated this 12th day of March 2002 at Oakland, California.

/s/ Bruce I. Friend
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